

Town & Country Cadillac, Inc. and Automobile Mechanics, Local 701, International Association of Machinists & Aerospace Workers, AFL-CIO, Petitioner. Case 13-RC-16089

15 August 1983

ORDER DIRECTING HEARING

BY CHAIRMAN DOTSON AND MEMBERS
JENKINS AND HUNTER

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered the objection to an election held on 3 November 1982¹ and the Regional Director's report recommending disposition of same.

The Board has reviewed the record in light of the exception and brief and is of the opinion that the allegations in the objection, and the evidence submitted in relation thereto, raise material issues which can best be resolved by a hearing.

In its objection, the Employer contends that the Petitioner interfered with the election by an improper offer to reduce initiation fees in violation of the principles established in *NLRB v. Savair Manufacturing Co.*, 414 U.S. 270 (1973). According to the Regional Director's report, the Employer offered evidence that during an organizational meeting a representative of the Petitioner told the employees that the regular initiation fee for a shop already organized was more than \$100 but that "new shops" were charged \$25. The Petitioner's representative, in contrast, stated that the offer was for a reduced initiation fee remaining open to all employees in the bargaining unit until a collective-bargaining agreement was reached with the Employer.

The Regional Director accepted the evidence offered by the Employer as true, but found that the offer was not linked with a showing of preelection support and was not so ambiguous as to make such an interpretation likely. He, therefore, found that the offer was not impermissible under *Savair Manufacturing Co.*, *supra*, and recommended that the objection be overruled.

In its exception, the Employer contends that, because the offer could reasonably be interpreted as ending with the election, it was impermissibly linked with a showing of preelection support and thus is the kind of offer found objectionable in *Savair Manufacturing Co.*, *supra*. The Employer attaches an employee affidavit where the employees states that at a union meeting a representative of the Petitioner told the employees "if our shop were

already a union shop, it would cost one hundred and some dollars to join, but since it's not yet, the initiation fee would be \$25.00."

We find merit to the Employer's exception. In *Smith Company of California, Inc.*, 215 NLRB 530 (1974), the Board found a similar initiation fee offer to be impermissibly ambiguous. There, the union representative told the employees that there would be no initiation fee "during a new organization" but "anyone who would come in after the plant became union" would have to pay the \$30 initiation fee. In that case, however, evidence was credited that the union representative clarified to the employees that the offer was open until the parties reached a collective-bargaining agreement. On that basis, the Board overruled the objection.

Here, too, there is evidence that the Petitioner's representative clarified the above-described offer to reduce initiation fees. To this extent, the affidavit of the Petitioner is inconsistent with that submitted by the Employer. There are, therefore, inconsistent statements on a material point. Because we find that material and substantial issues have been raised concerning the contents of the initiation fee offer, we find that a hearing is necessary.

Accordingly, we shall order a hearing on the issues raised by the Employer's objection.

ORDER

It is hereby ordered that a hearing be held before a duly designated hearing officer for the purpose of receiving evidence to resolve the issues raised by the Employer's objection.

IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting such hearing shall prepare and cause to be served on the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said objection. Within the time prescribed by the National Labor Relations Board Rules and Regulations, Series 8, as amended, any party may file with the Board in Washington, D.C., eight copies of exceptions thereto. Immediately upon the filing of such exceptions, the party filing the same shall serve a copy thereof on each of the other parties and shall file a copy with the Regional Director. If no exceptions are filed thereto, the Board will adopt the recommendations of the hearing officer.

IT IS FURTHER ORDERED that the above-entitled matter be, and it hereby is, remanded to the Regional Director for Region 13 for the purpose of conducting such hearing, and that the said Regional Director be, and hereby is, authorized to issue notice thereof.

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was: six for, and four against, the Petitioner, with no challenged ballots.